

November 30, 2011

Overnight Delivery

Ms. Helena Wooden-Aguilar, Assistant Director
Office of Civil Rights
U.S. Environmental Protection Agency
Mail Code 1201A
1200 Pennsylvania Ave NW
Washington, D.C. 20460

Re: Title VI Complaint - Northwest Florida Renewable Energy Center, LLC, Port St. Joe, Florida

Dear Ms. Wooden-Aguilar:

This complaint is filed pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and 40 C.F.R. Part 7. 40 C.F.R. § 7.35(b) provides:

A recipient [of EPA financial assistance] shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex.

“Frequently, discrimination results from policies and practices that are neutral on their face, but have the effect of discriminating. Facially-neutral policies or practices that result in discriminatory effects violate EPA’s Title VI regulations unless it is shown that they are justified and that there is no less discriminatory alternative.” Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits (EPA, Feb. 5, 1998) at 2 (footnote omitted) published at <http://www.enviro-lawyer.com/Interim%20Guidance.pdf>. “[M]erely demonstrating that the permit complies with applicable environmental regulations will not ordinarily be considered a substantial, legitimate justification.” Id. at 11. And, “[i]f a less discriminatory alternative is practicable, then the recipient must implement it to avoid a finding of noncompliance with the regulations.” Id. “In the event that EPA finds discrimination in a recipient’s permitting program, and the recipient is not able to come into compliance voluntarily, EPA is required by its Title VI regulations to initiate procedures to deny, annul, suspend, or terminate EPA funding.” Id. at 3 (footnotes omitted) (citing 40 C.F.R. §§ 7.115(e), 7.130(b), 7.110(c)). “EPA also may use any other means authorized by law to obtain compliance, including referring the matter to the Department of Justice (DOJ) for litigation. In appropriate cases, DOJ may file suit seeking injunctive relief.” Id.


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I. Complainants

The complainants' names, addresses and phone numbers are as follows:

[REDACTED]

The complainants are represented by their attorney, David A. Ludder. All contacts with the complainants should be made through their attorney or with the express permission of their attorney.

II. Recipient

The Florida Department of Environmental Protection (FDEP) was a recipient of financial assistance from EPA at the time of the alleged discriminatory act. See EPA Grant Awards Database at http://yosemite.epa.gov/oarm/igms_egf.nsf/AdvSearch?ReadForm. For example, FDEP was recently awarded the grants identified in Table 1 below.

III. Discriminatory Act

The alleged discriminatory act is the issuance of Air Permit No. 0450012-002-AC to Northwest Florida Renewable Energy Center, LLC. Attachment A. The permit authorizes "the construction of a nominal 55 megawatts (MWnet) biomass fed gasification and combined cycle (BGCC) power plant called the NWFREC." Attachment A (Permit) at 1. The "permit authorizes construction of the permitted emissions units and initial operation to determine compliance with Department rules." Attachment A (Permit) at 6. "The fuel source for the facility will be untreated woody biomass that consists primarily of wood chips but may also include agricultural crops and byproducts and logging and lumber mill residues as well as yard waste." Attachment A (Permit) at 4. The facility is located at approximately Latitude 29.83537° North, Longitude 85.30082° West.

IV. Timeliness

40 C.F.R. § 7.120(b)(2) requires that a complaint alleging discrimination under a program or activity receiving EPA financial assistance must be filed within 180 days after the alleged discriminatory act. The issuance of Air Permit No. 0450012-002-AC to Northwest Florida Renewable Energy Center, LLC occurred on June 9, 2011. This complaint is filed within the 180 after the permit was issued.